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OFFICE OF PETITIONS

In re Application of :
Teig et al. :
Application No. 09/739,589 : DECISION GRANTING PETITION
Filed: 15 December, 2000 :
Attorney Docket No. SPLX.P0014 :

This is a decision on the renewed petition, filed on 11 September, 2003, to revive the above-identified nonprovisional application under the unintentional provisions of 37 CFR 1.137(b).¹

The petition is **GRANTED**.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Petitioner states that the present nonprovisional application is the subject of a foreign or international application filed on 5 December, 2001. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(f) must be accompanied by:

- (1) the reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The present petition has been found to be in compliance with 37 CFR 1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(I) has been rescinded.

A Communication Regarding Rescission of Nonpublication Request and/or Notice of Foreign Filing, which sets forth the projected publication date of 24 June, 2004, is enclosed herewith.

The application became abandoned on 3 April, 2003, for failure to file a timely reply to the non-final Office action mailed on 2 January, 2003. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. The filing of the present petition precedes the mailing of Notice of Abandonment.

Petitioner has filed an amendment as the required reply.

The application is being forwarded to Technology Center 2800 for examination in due course.

Application No. 09/739,589

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Any inquiries concerning this decision may be directed to the undersigned at 703.308.6918.



Douglas I. Wood
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Office of Petitions

Encl: Communication Regarding Rescission of Nonpublication
Request and/or Notice of Foreign Filing